THE LICENSING QUESTION IN ENGLAND

After the fiscal controversy, there is probably no matter of keener dispute in England at the present day than the licensing question. The law on that subject has, unfortunately, not been codified, and is embedded in a great multitude of Acts of Parliament, commencing with the Ale-house Act of 1828 and ending with the Licensing Act of 1902. It would be impossible to go through the provisions of these different statutes in a small space or to describe the differences which exist in the incidents of the various classes of premises in which intoxicating liquor is permitted to be sold; to explain how an "on-license" differs from an "off-license," or an ale-house license from a beer-house license, or a grocer's license from that of a refreshment-house keeper. It must suffice to give the broad features of the system, so far as it concerns the licensing of public houses (or "saloons," as they are called in America) for the sale of drink for consumption on the premises.

There is no such thing as local option in England, nor has the municipality any powers of licensing or any control over licensed premises; and, although suggestions have occasionally been heard that such powers should be given to them, the feeling of the country is undoubtedly against any step which would give them the power of regulating the drink traffic—still more against permitting them to trade in it themselves. In order to open a public house the first requisite is a justice's license; the second, which follows, as of course, is an excise license. Only the second has to be paid for, and it costs no considerable sum. The licensing authority, which grants or refuses to grant licenses, and which transfers, renews or refuses to renew them, and before which prosecutions for infringement of the licensing laws are brought, is the petty sessional court, consisting of the justices of the peace for each division of the county. The licensee enters into no recognizance for the proper management of his house, but he holds his license subject to the fulfilment of certain conditions, for the breach of which he is liable to severe penalties on summary conviction. There is a right of appeal in most cases from the justices to the court of quarter sessions. The hours during which a licensed house must be closed are fixed by the Licensing Act of 1874, and they vary according as the house is situated within the metropolitan district, in a town or populous district, or within a non-populous district. They are as follows:

Metropolitan District.	Town or Populous District.	Non-Populous District.
	SATURDAY NIGHT	
Midnight—1.00 p.m. Sunday.	11.00 p. m.—12.30 or 1.00 p. m. Sunday.	10.00 p. m.—12.30 or 1.00 p. m. Sunday.
	SUNDAY	
3 00 p. m.—6.00 p. m. and 11.00 p. m.—5.00 a. m. Monday.	2.30 or 3.00 p. m.—6.00 p. m. 10.00 p. m.—6.00 a. m. Monday.	2.30 or 3.00 p. m.—6.00 p. m. 10.00 p. m.—6.00 a. m Monday.
	OTHER NIGHTS	
12.30 p. m.—5.00 a. m.	11.00 p. m.—6.00 a. m.	10.00 p. m.—6.00 a. m.

The alternative times for closing on Sunday afternoons in districts outside London are left to be fixed by the justices, so that they may be accommodated to the hours of church service. Wales, however, is in a different position; for, some twenty-three years ago, an act was passed which made Sunday closing compulsory. During any closing hours, *bona fide* travelers and lodgers in the house may be served, by the former term being meant persons who have lodged for the preceding night in a place at least three miles distant by the nearest thoroughfare. Early-closing licenses and six-day licenses also exist, and can be obtained from the justices instead of ordinary licenses. They were introduced under the belief, since shown to be mistaken, that a license-holder must keep his premises open during all except closing hours. Early-closing houses close an hour before others at night, and six-day houses are closed on Sundays. A remission of a sixth of the excise duty is allowed in each case.

The legislature has taken steps to prevent drinking amongst children. The sale of spirits to children apparently under the age of sixteen has long been prohibited, and now, by the Intoxicating Liquors (sale to children) Act of 1901—commonly known as the "Child Messenger Act"—the sale of any intoxicating liquor to a child under fourteen is prohibited, except in corked and sealed bottle containing not less than a pint.

A Royal Commission was appointed in 1896 to investigate and report upon the working and administration of the law relating to the supply of intoxicants. The evidence taken before it fills nine large blue books, and the final report was not presented until 1899; the value of its recommendations was seriously diminished by the division of opinion which it disclosed amongst its members. It resulted, however, in the introduction by the Right Hon. C. T. Ritchie (formerly Home Secretary and afterward Chancellor of the Exchequer) of a bill which was passed as the Licensing Act of 1902. The act is concerned with a large number of points, only a few of which can here be mentioned. Part I. deals with the amendment of the laws as to drunkenness. A person found drunk and incapable in a highway or other public place, or in any licensed premises, or found drunk and having in his charge a child under the age of seven years, may be apprehended and punished. Husband or wife can obtain a judicial separation for habitual drunkenness in the other. A drunken wife may also, if she consents to such a course, be confined in an inebriate retreat. License-holders may not for three years serve any person convicted of habitual drunkenness, and both they and the police have to keep a list of such persons. This "black list" section of the Act has been the object of a good deal of ridicule, and it cannot be said to have proved of much use in reducing drunkenness. Part II. makes certain minor alterations in the licensing law. Part III. deals with clubs, its object being to obtain some control over the many "bogus" clubs which exist merely for the purpose of supplying drink without the supervision of the authorities. It provides for the registration of clubs where intoxicating liquor is sold, and requires various particulars to be sent periodically by their secretary to the clerk of the petty sessional division within which they are situated.

The question of the moment is, however, one apart from these matters. The

justices have a complete discretion in granting or refusing new licenses, but until recently they were thought to possess a more restricted authority so far as concerns their refusal to the continuation of existing licenses. Decisions, however, such as that of *Sharp* v. *Wakefield* (1891) A. C. 173 and *Boulter* v. *Kent Justices* (1897) A. C. 569, which went up to the House of Lords, and that of *Rex* v. *Licensing Justices of Farnham*, decided in the Court of Appeal, have shown that the discretion of the justices is almost as large in the latter case as in the former. A growing determination has manifested itself amongst the justices throughout the country to check drunkenness by cutting down the number of licensed houses, and the matter has come to a head owing to the strong expressions of opinion which have come from some of them, and in particular from Mr. Arthur Chamberlain (the brother of the ex-Secretary for the Colonies), who advocates reducing licenses by abolishing them even where there has been no mismanagement of the house. The trade is, naturally, filled with apprehension at the prospect of losing valuable rights which they have come to look upon—rightly or wrongly—as permanent assets. Moreover, the great majority of public houses in England are not free, but are "tied," that is to say, their holders are bound by contract to buy their beer from a particular firm or company of brewers. Very often they are "tied" as to spirits as well, and sometimes as to everything in the house except the sawdust on the floor. The influence of the brewers and others in the country is great enough to make it capable of turning the scale one way or the other at a general election. There is little doubt that the government will introduce a licensing bill this session to deal with the question. Forecasts of this legislation have appeared in the Birmingham *Daily Post* and in the *Yorkshire Post*, but it is difficult to say how far they are correct, or, indeed, whether the government has yet formulated any definite plan. The general impression appears to be that the bill will provide that no new license shall be granted except in exchange for one, or possibly two, old licenses; and that, so far as the abolition of existing licenses is concerned, no compensation is to be given to the holder, but the trade is to be left to make some arrangement for mutual insurance against forfeiture of the license. And, in order that it may have sufficient time to do so, it is to be provided that for five years no license shall be taken away except for gross misconduct.

The refusal of compensation is based upon the ground that the trade as a whole would suffer no loss, since the result would only be that a man who was used to drinking his pint of ale at one public house, would have it at another. But, as Sir Edward Clarke recently pointed out in a speech delivered at the Constitutional Club, this involves the dilemma that either the trade has money taken from its pocket, or there is no reduction of drinking. His scheme, which has found many supporters, is this:

1. After the Act, no new "on-license" is to be granted for a public house or beer-house.

2. No renewal or transfer is to be refused merely on the ground that the house is not required for the convenience of the district.

3. The grounds of any refusal to renew are to be stated by the justices in

writing and a copy given to the applicant, with a view to an appeal to Quarter Sessions.

4. The justices may remove a license to any house within their division, provided that the justices of the division from which it is transferred do not consider that the removal would cause serious inconvenience within their own district.

Whatever be the other features of a licensing bill, it is to be hoped that it will prohibit an increase in the number of licensed houses. That step alone would very greatly diminish the evil of giving the man addicted to drink unwise facilities and over-great temptations to gratify his inclination. In the last fifty years the population of the country has increased by 40 per cent. If it grows at the same rate in the future, and if the number of licenses remains at its present figure, the proportion of inhabitants to each public house will soon be materially diminished.

It has been suggested that the best course for the government to adopt is to bring in a strong licensing bill and then at once to dissolve, so that their party may go to the poll with all the influence of the trade at their back. Such a step would justify Mr. Arthur Chamberlain's remark that the government's only policy was an electioneering one. It would be an unfortunate step to take. It is unfortunate, as it is, that the question should have become a party one, and that the Conservative party should, at least in appearance, be joined in a holy alliance with the liquor trade. It is clear that the Liberals, too, intend to make the matter a test of party strength. Sir Henry Campbell-Bannerman, their leader in the House of Commons, has already given the call to his adherents to oppose the foreshadowed bill, as imposing fetters upon magisterial discretion. Perhaps the best hope for the future is that the new measure may provide a final solution to the question by definitely laying down the system which is to be adopted throughout the country for the reduction of licenses, and that, by withdrawing from the justices their wide administrative discretion in granting or refusing renewals, and by leaving them with purely judicial powers in this respect, the security of the trade may be restored, a constant source of friction may be removed, and the door at length closed upon local bickerings and party prejudice.

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